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BEFORE THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN

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JIM IRVIN

COMMISSIONER

WILLIAM A. MUNDELL

COMMISSIONER

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AZ CORP COMMISSION  
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IN THE MATTER OF INVESTIGATION INTO  
QWEST CORPORATION'S COMPLIANCE WITH  
CERTAIN WHOLESALE PRICING  
REQUIREMENTS FOR UNBUNDLED  
NETWORK ELEMENTS AND RESALE  
DISCOUNTS.

DOCKET NO. T-00000A-00-0194

**PROCEDURAL ORDER****BY THE COMMISSION:**

On July 25, 2000, the Arizona Corporation Commission ("Commission") issued Decision No. 62753 on Phase I of the above-captioned matter.

On July 31, 2000, AT&T Communications of the Mountain States, Inc. ("AT&T") filed a Request for Reconsideration ("Request") of Decision No. 62753.

Our August 21, 2000 Procedural Order established a procedural schedule for Phase II of the above-captioned matter.

On August 21, 2000, the Commission at Open Meeting denied the Request, but ordered the issues contained in the Request to be included as part of Phase II.

Accordingly, our August 21, 2000 Procedural Order is amended to include the issues contained in the Request.

IT IS THEREFORE ORDERED that our August 21, 2000 Procedural Order is hereby amended to include the issues contained in the Request for Reconsideration (see Attachment No. 1) filed by AT&T on July 31, 2000.

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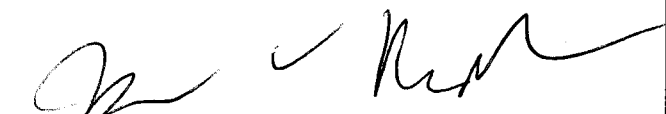
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IT IS FURTHER ORDERED that the Arbitrator(s) may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at arbitration.

DATED this 22nd day of August, 2000.

  
 JERRY L. RUDIBAUGH  
 CHIEF ADMINISTRATIVE LAW JUDGE

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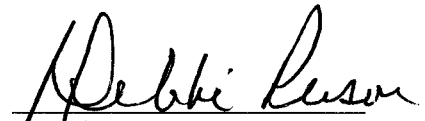
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## BEFORE THE ARIZONA CORPORATION COMMISSION

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Chairman

JAMES M. IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

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JUL 31 2000

ARIZONA CORP. COMM.  
HEARING DIVISION

IN THE MATTER OF INVESTIGATION )  
 INTO U S WEST COMMUNICATIONS, )  
 INC.'S COMPLIANCE WITH CERTAIN )  
 WHOLESALE PRICING REQUIREMENTS )  
 FOR UNBUNDLED NETWORK )  
 ELEMENTS AND RESALE DISCOUNTS )

DOCKET NO. T-00000A-00-0194

AT&T'S REQUEST FOR  
RECONSIDERATION

Pursuant to Ariz. Adm. Code R14-3-111, AT&T Communications of the Mountain States, Inc. ("AT&T") requests reconsideration of the Arizona Corporation Commission's ("Commission") Order and Opinion, Decision No. 62753.

The Commission entered an order on July 25, 2000, adopting U S WEST Communications, Inc.'s ("U S WEST") proposed methodology for establishing deaveraged rates for the unbundled loop. However, the Commission used U S WEST's current retail zones, instead of the zones proposed in U S WEST's current rate case. The rates are subject to true-up, and the competitive local exchange carriers ("CLECs") may ultimately collect interest.

The rates adopted are not compliant with Section 252 of the Telecommunications Act of 1996 ("Act") or the Federal Communications Commission's ("FCC") orders and rules. The rates will not promote residential or business competition, as contemplated by the Act. In fact, the explicit purpose for adopting U S WEST's rates is to continue to delay competition for residential telecommunications customers in Arizona.

U S WEST has not taken issue with AT&T's statements contained in AT&T's brief that the rates include implicit subsidies. Nor did U S WEST take issue with similar statements made by AT&T at the open meeting before the Commission. TR 26-28 (July 18, 2000). In fact, U S WEST witness testified that the rates contain implicit subsidies to subsidize *retail* services. Million Direct at 17-18. The Administrative Law Judge stated that "the order acknowledges that [the ACC] need[s] to go to more cost based rates." TR 28. Furthermore, the Opinion and Order finds (at paragraph 19) that "Staff and AT&T presented plans that reflect costs better than U S WEST's proposal." Although no party has taken issue with the fact that the deaveraged unbundled loop rates adopted contain explicit subsidies, the Commission has ignored FCC orders and rules and court decisions<sup>1</sup> that prohibit the inclusion of implicit subsidies to support universal service in rates for unbundled network elements ("UNEs").

More recently, the Eighth Circuit Court of Appeals held that "the costs of universal service subsidies should not be included in the costs of providing the network elements." *Iowa Utils. Bd. v. FCC*, No. 96-3321, slip op. 13 (July 18, 2000 8<sup>th</sup> Cir.). In essence, in an attempt to comply with a FCC rule requiring that rates for UNEs be deaveraged, the Commission is violating another FCC rule that specifically prohibits the recovery of universal service subsidies in rates for the very same UNEs, even on an interim basis. The FCC has explicitly stated that "[s]tates may not . . . include universal service support funding

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<sup>1</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996) ("Local Competition Order"), ¶ 713; 47 C.F.R. § 51.505(d)(4). *AT&T v. Pacific Bell*, 1998 WL 246652, \*10 (N.D. Cal.); *Southwestern Bell v. AT&T*, 1998 WL 657717, \*12 (W.D. Tex.) ("In addition, the Court rejects SWBT's attempts to raise 'universal service' issues as an end-run attack against the TELRIC methodology."); *Southwestern Bell v. FCC*, 153 F.3d 523, 539-540 (8<sup>th</sup> Cir. 1998).

in rates for elements or services pursuant to Sections 251 and 252, nor may they implement mechanisms that have the same effect.”<sup>2</sup>

The Decision states that the deaveraged loop rate is an interim rate and that it is subject to refund, and possibly interest, at the time permanent rates are established in Phase II of the proceeding. The problem inherent in a refund mechanism is that between the time that the interim rates are set and permanent rates are established, competition is precluded in many areas and for certain classes of customers. Therefore, establishing interim rates subject to a refund by itself is a necessary but inadequate solution. Paying interest does not resolve this problem. No reasonable businessman is going to invest millions of dollars on a bet that the Commission will set future rates that are cost-based and promote competition. This Commission has had two opportunities to establish cost-based UNE rates and both times the rates authorized by the Commission preclude local residential telecommunications competition and violate legal decisions interpreting the Commission’s obligations under the Act.

The methodology or mechanism adopted by the Opinion and Order, by U S WEST’s own admission, is intended to recover implicit universal service subsidies. Because the Commission allows U S WEST to recover implicit universal service subsidies in rates for UNEs, the rates are contrary to FCC rules, federal court decisions and Section 252 of the Telecommunications Act of 1996. Simply stated, the rates are unlawful.

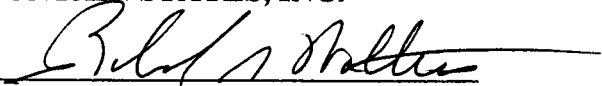
AT&T respectfully requests that the Commission reconsider the Decision and adopt AT&T’s proposed deaveraged rates for the unbundled loop and its five zones.

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<sup>2</sup> In *Local Competition Order*, ¶ 713.

Dated submitted this 27th day of July, 2000.

**AT&T COMMUNICATIONS OF THE  
MOUNTAIN STATES, INC.**

By: 

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## CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of AT&T Communications of the Mountain States, Inc.'s Request for Reconsideration in Docket No. T-00000A-00-0194 were sent by overnight delivery on this 27<sup>th</sup> day of July, 2000 to:

Arizona Corporation Commission  
Docket Control - Utilities Division  
1200 West Washington Street  
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